

2003 DRAFTING REQUEST

Bill

Received: **12/02/2002**

Received By: **gmalaise**

Wanted: **As time permits**

Identical to LRB:

For: **Christine Sinicki (608) 266-8588**

By/Representing: **Jan Koloen**

This file may be shown to any legislator: **NO**

Drafter: **gmalaise**

May Contact:

Addl. Drafters:

Subject: **Discrimination**

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Sinicki@legis.state.wi.us**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Employment discrimination; compensatory and punitive damages; wage disparity study commission

Instructions:

Redraft s0201/1 to 2001 AB 294

Drafting History:

| <u>Vers.</u> | <u>Drafted</u> | <u>Reviewed</u> | <u>Typed</u> | <u>Proofed</u> | <u>Submitted</u> | <u>Jacketed</u> | <u>Required</u> |
|--------------|------------------------|--|------------------------|-------------------------|-----------------------|------------------------|-----------------|
| /? | gmalaise 12/30/2002 | kfollett 02/11/2003 kfollett 02/11/2003 | | _____ _____ _____ | | | S&L |
| /1 | | | pgreensl 02/11/2003 | _____ _____ | mbarman 02/11/2003 | sbasford 04/15/2003 | |

Vers. Drafted Reviewed Typed Proofed Submitted Jacketed Required

sbasford
04/15/2003

FE Sent For:

<END>

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Intro.

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| FE Sent For: | | 1/1 kjf 2/11 | 2/11 PS | 2/11 <END> P 8/19/02 | | | |

2001 DRAFTING REQUEST**Assembly Substitute Amendment (ASA-AB294)**

Received: 10/12/2001

Received By: malaigm

Wanted: 10/15/2001

Identical to LRB:

For: Christine Sinicki (608) 266-8588

By/Representing: Jan Kloen

This file may be shown to any legislator: NO

Drafter: malaigm

May Contact:

Addl. Drafters:

Subject: Discrimination - employment

Extra Copies:

Submit via email: NO

Pre Topic:

No specific pre topic given

Topic:

Permitting an award of damages and an assessment in employment discrimination cases

Instructions:

Apply bill to all protected classes under Fair Employment Law.

Drafting History:

| <u>Vers.</u> | <u>Drafted</u> | <u>Reviewed</u> | <u>Typed</u> | <u>Proofed</u> | <u>Submitted</u> | <u>Jacketed</u> | <u>Required</u> |
|--------------|-----------------------|---------------------|------------------------|----------------|----------------------------|----------------------------|-----------------|
| /? | malaigm 10/12/2001 | jdyer 10/15/2001 | | _____ | | | |
| /1 | | | pgreensl 10/15/2001 | _____ | lrb_docadmin 10/15/2001 | lrb_docadmin 10/15/2001 | |
| | | | | _____ | lrb_docadmin 10/15/2001 | lrb_docadmin 10/15/2001 | |
| | | | | _____ | | | |

FE Sent For:

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10/12/2001 12:11:09 PM

Page 1

2001 DRAFTING REQUEST**Assembly Substitute Amendment (ASA-AB294)**

Received: 10/12/2001

Received By: malaigm

Wanted: 10/15/2001

Identical to LRB:

For: Christine Sinicki (608) 266-8588

By/Representing: Jan Kloen

This file may be shown to any legislator: NO

Drafter: malaigm

May Contact:

Addl. Drafters:

Subject: Discrimination - employment

Extra Copies:

Submit via email: NO

Pre Topic:

No specific pre topic given

Topic:

Permitting an award of damages and an assessment in employment discrimination cases

Instructions:

Apply bill to all protected classes under Fair Employment Law.

Drafting History:

| <u>Vers.</u> | <u>Drafted</u> | <u>Reviewed</u> | <u>Typed</u> | <u>Proofed</u> | <u>Submitted</u> | <u>Jacketed</u> | <u>Required</u> |
|--------------|----------------|-----------------|--------------|-----------------|------------------|-----------------|-----------------|
| 1? | malaigm | 10/15 jld | 12/15 ps | 14/15 pg 15F | | | |

FE Sent For:

<END>

2001

Date (time)
needed

(Draft)
Mon 10/15

LRBs 0201 / 1

**SUBSTITUTE AMENDMENT
[TO A BILL]**

GMM: jld: _____

Use the appropriate components and routines developed for substitute amendments.

§ (A) SUBSTITUTE AMENDMENT

TO 2001 ~~SB~~ AB 294 (LRB _____)

AN ACT . . . [generate catalog] *to repeal . . . ; to renumber . . . ; to consolidate and renumber . . . ; to renumber and amend . . . ; to consolidate, renumber and amend . . . ; to amend . . . ; to repeal and recreate . . . ; and to create . . .* of the statutes; **relating to:**

.....
.....
.....
.....
.....

[NOTE: See section 4.02 (2) (br), Drafting Manual, for specific order of standard phrases.]

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION #.

50201/1

2001 ASSEMBLY BILL 294

April 6, 2001 - Introduced by Representatives ~~SINICKI, BALOW, BERCEAU, BLACK, BOCK, BOYLE, CARPENTER, COGGS, COLON, HEBL, KREUSER, LA FAVE, J. LEHMAN, MEYERHOFER, MILLER, PLOUFFE, POCAN, RICHARDS, RILEY, RYBA, SHILLING, GRONEMUS and TURNER~~, cosponsored by Senators ~~ERPENBACH, BURKE, CHVALA, DECKER, MOORE, RISSER, ROBSON and BAUMGART~~. Referred to Committee on Labor and Workforce Development.

engages in discrimination in ~~employment~~

1 ~~AN ACT to renumber and amend 111.39 (4) (c), and to create 20.445 (1) (gr),~~
 2 ~~111.39 (4) (c) 2., 111.39 (4) (c) 3. and 111.39 (4) (c) 4. of the statutes; relating~~
 3 ~~to;~~ authorizing the department of workforce development to order a person who
 4 ~~discriminates in promotion, compensation, or in terms, conditions, or privileges~~
 5 ~~of employment on the basis of sex, race, color, national origin, or ancestry to pay~~
 6 compensatory and punitive damages and an assessment, directing the
 7 secretary of workforce development to appoint a committee to study wage
 8 disparities between men and women and between minority group members and
 9 nonminority group members, and making an appropriation.

Analysis by the Legislative Reference Bureau

Under the current fair employment law, if the department of workforce development (DWD) finds that a person has refused to hire an individual, terminated an individual's employment, or discriminated against an individual in promotion, compensation, or in terms, conditions, or privileges of employment on the basis of the individual's age, race, creed, color, disability, marital status, sex, national origin, ancestry, arrest or conviction record, membership in the national guard or military reserves, or use or nonuse of a lawful product during nonwork hours, DWD

ASSEMBLY BILL 294

may order the person to take such action as will effectuate the purpose of the fair employment law. That action may include reinstating the employee and providing back pay for not more than two years before the filing of the complaint, costs, and attorney fees. Current law, however, does not authorize DWD to order the payment of compensatory or punitive damages or any other assessments or penalties in a case of employment discrimination.

This bill authorizes DWD to order a person who has discriminated against an individual in promotion, compensation, or in terms, conditions, or privileges of employment on the basis of the individual's sex, race, color, national origin, or ancestry to pay to the individual compensatory and punitive damages in an amount that DWD finds appropriate and to pay to DWD an assessment equal to 10% of the amount of compensatory and punitive damages ordered. DWD must use those assessments collected for the administration of the fair employment law.

The bill also directs the secretary of workforce development (secretary) to appoint a committee to study the issue of wage disparities between men and women and between minority group members and nonminority group members and to recommend solutions and policy alternatives, including proposed legislation, to eliminate and prevent those wage disparities. The committee must consist of representatives of business and industry, organized labor, organizations whose objectives include the elimination of wage disparities, and employees of institutions of higher education or research institutions who have experience and expertise in the collection and analysis of data concerning wage disparities. The committee must report its findings, conclusions, and recommendations to the secretary by the first day of the 15th month beginning after publication of the bill, and the secretary must submit that report to the appropriate standing committees of the legislature and to the governor by the first day of the 16th month beginning after publication of the bill.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 20.445 (1) (gr) [✓] of the statutes is created to read:

2 20.445 (1) (gr) *Employment discrimination assessments.* All moneys received
3 from assessments collected under s. 111.39 (4) (c) 2., for the administration of subch.
4 II of ch. 111.

5 **SECTION 2.** 111.39 (4) (c) [✓] of the statutes is renumbered 111.39 (4) (c) 1. and
6 amended to read:

ASSEMBLY BILL 294

1 111.39 (4) (c) 1. If, after hearing, the examiner finds that the respondent has
2 engaged in discrimination, unfair honesty testing, or unfair genetic testing, the
3 examiner shall make written findings and order such action by the respondent as
4 will effectuate the purpose of this subchapter, with or without back pay. If the
5 examiner awards any payment to an employee because of a violation of s. 111.321 by
6 an individual employed by the employer, under s. 111.32 (6), the employer of that
7 individual is liable for the payment. If the examiner finds a respondent violated s.
8 111.322 (2m), the examiner shall award compensation in lieu of reinstatement if
9 requested by all parties and may award compensation in lieu of reinstatement if
10 requested by any party. Compensation in lieu of reinstatement for a violation of s.
11 111.322 (2m) may not be less than 500 times nor more than 1,000 times the hourly
12 wage of the person discriminated against when the violation occurred. Back pay
13 liability may not accrue from a date more than 2 years prior to the filing of a
14 complaint with the department. Interim earnings or amounts earnable with
15 reasonable diligence by the person discriminated against or subjected to unfair
16 honesty testing or unfair genetic testing shall operate to reduce back pay otherwise
17 allowable. Amounts received by the person discriminated against or subject to the
18 unfair honesty testing or unfair genetic testing as unemployment benefits or welfare
19 payments shall not reduce the back pay otherwise allowable, but shall be withheld
20 from the person discriminated against or subject to unfair honesty testing or unfair
21 genetic testing and immediately paid to the unemployment reserve fund or, in the
22 case of a welfare payment, to the welfare agency making the payment.

23 SECTION 3. 111.39 (4) (c) 2. of the statutes is created to read:

24 111.39 (4) (c) 2. If the examiner finds that a respondent has ~~discriminated~~
25 against a person ~~in promotion, compensation, or in terms, conditions, or privileges~~

engaged in
discrimination

ASSEMBLY BILL 294

SECTION 3

1 ~~of employment on the basis of sex, race, color, national origin, or ancestry,~~ the
2 examiner, in addition to any action ordered under subd. 1., shall order the
3 respondent to pay to the person compensatory and punitive damages in an amount
4 that the examiner finds appropriate and to pay to the department an assessment
5 equal to 10% of the amount of compensatory and punitive damages ordered. All
6 assessments collected under this subdivision shall be deposited in the general fund
7 and credited to the appropriation account under s. 20.445 (1) (gr).

8 **SECTION 4.** 111.39 (4) (c) 3. ✓ of the statutes is created to read:

9 111.39 (4) (c) 3. If the examiner orders any payment under subd. 1. or 2. because
10 of a violation of s. 111.321 by an individual employed by an employer, the employer
11 of that individual is liable for the payment.

12 **SECTION 5.** 111.39 (4) (c) 4. ✓ of the statutes is created to read:

13 111.39 (4) (c) 4. If the examiner finds a respondent violated s. 111.322 (2m), the
14 examiner shall award compensation in lieu of reinstatement if requested by all
15 parties and may award compensation in lieu of reinstatement if requested by any
16 party. Compensation in lieu of reinstatement for a violation of s. 111.322 (2m) may
17 not be less than 500 times nor more than 1,000 times the hourly wage of the person
18 discriminated against when the violation occurred.

19 **SECTION 6. Nonstatutory provisions.**

20 (1) **WAGE DISPARITY STUDY.**

21 (a) *Definition.* In this subsection, "minority group member" has the meaning
22 given in section 560.036 (1) (f) of the statutes.

23 (b) *Committee.* By the first day of the 3rd month beginning after the effective
24 date of this paragraph, the secretary of workforce development shall create and
25 appoint a committee consisting of the members specified in paragraph (c) to study

ASSEMBLY BILL 294

1 the issues specified in paragraph (d) and report its findings, conclusions, and
2 recommendations as provided in paragraph (e).

3 (c) *Membership.* The committee shall consist of the following members:

4 1. Two members who are representatives of business and industry, who shall
5 be appointed from a list of candidates submitted by an association that represents
6 the interests of businesses and industries in this state.

7 2. Two members who are representatives of organized labor, who shall be
8 appointed from a list of candidates submitted by a labor organization that is
9 chartered by a federation of national or international labor organizations, admits to
10 membership local labor organizations, and exists primarily to carry on educational,
11 legislative, and coordinating activities.

12 3. Two members who are representatives of organizations whose objectives
13 include the elimination of wage disparities between men and women and between
14 minority group members and nonminority group members and who have
15 undertaken advocacy, educational, or legislative initiatives in pursuit of that
16 objective.

17 4. Three members who are employees of an institution of higher education or
18 a research institution and who have experience and expertise in the collection and
19 analysis of data concerning wage disparities between men and women and between
20 minority group members and nonminority group members and whose research has
21 been used in efforts to eliminate those disparities.

22 (d) *Study.* The committee shall study all of the following:

23 1. The extent to which wage disparities exist, in both the public and private
24 sectors, between men and women and between minority group members and
25 nonminority group members.

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SECTION 6

2. The factors that cause, or that tend to cause, those wage disparities, including segregation between men and women and between minority group members and nonminority group members, both within and across occupations; the payment of lower wages in occupations dominated by women or by minority group members; disparities between men and women in child-rearing responsibilities; and disparities in education and training between men and women and between minority group members and nonminority group members.

3. The consequences of those wage disparities on the economy and on individual families.

(e) *Recommendations.* The committee shall recommend solutions and policy alternatives, including proposed legislation, to eliminate and prevent wage disparities between men and women and between minority group members and nonminority group members. By the first day of the 15th month beginning after the effective date of this paragraph, the committee shall report its findings, conclusions, and recommendations to the secretary of workforce development who shall submit that report to the appropriate standing committees of the legislature in the manner provided under section 13.72 (3) of the statutes and to the governor by the first day of the 16th month beginning after publication.

SECTION 7. Initial applicability.

(1) *Employment discrimination damages.* The renumbering and amendment of section 111.39 (4) (c) of the statutes and the creation of section 111.30 (4) (c) 2., 3., and 4. of the statutes first apply to acts of employment discrimination committed on the effective date of this subsection.

(END)

D/V > F

NOTE

ASSEMBLY SUBSTITUTE AMENDMENT,
TO 2001 ASSEMBLY BILL 294

2003 Bill

LPS-
check auto refs
please

Genlat

circuit court

1 AN ACT ~~relating to:~~ authorizing the ~~department of workforce development~~ to
2 order a person who engages in discrimination in employment to pay
3 compensatory and punitive damages and an assessment, directing the
4 secretary of workforce development to appoint a committee to study wage
5 disparities between men and women and between minority group members and
6 nonminority group members, and making an appropriation.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

7 SECTION 1. 20.445 (1) (gr) of the statutes is ~~created~~ to read:

8 20.445 (1) (gr) *Employment discrimination assessments*. All moneys received
9 from assessments collected under s. ~~111.39 (4) (c) 2~~, for the administration of subch.
10 II of ch. 111.

11 SECTION 2. ~~111.39 (4) (c) of the statutes is renumbered 111.39 (4) (c) 1. and~~
12 ~~amended to read:~~

Insert
A

111.397(1)

1 111.39 (4) (c) 1. If, after hearing, the examiner finds that the respondent has
2 engaged in discrimination, unfair honesty testing, or unfair genetic testing, the
3 examiner shall make written findings and order such action by the respondent as
4 will effectuate the purpose of this subchapter, with or without back pay. If the
5 examiner awards any payment to an employee because of a violation of s. 111.321 by
6 an individual employed by the employer, under s. 111.32 (6), the employer of that
7 individual is liable for the payment. If the examiner finds a respondent violated s.
8 111.322 (2m), the examiner shall award compensation in lieu of reinstatement if
9 requested by all parties and may award compensation in lieu of reinstatement if
10 requested by any party. Compensation in lieu of reinstatement for a violation of s.
11 111.322 (2m) may not be less than 500 times nor more than 1,000 times the hourly
12 wage of the person discriminated against when the violation occurred. Back pay
13 liability may not accrue from a date more than 2 years prior to the filing of a
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15 reasonable diligence by the person discriminated against or subjected to unfair
16 honesty testing or unfair genetic testing shall operate to reduce back pay otherwise
17 allowable. Amounts received by the person discriminated against or subject to the
18 unfair honesty testing or unfair genetic testing as unemployment benefits or welfare
19 payments shall not reduce the back pay otherwise allowable, but shall be withheld
20 from the person discriminated against or subject to unfair honesty testing or unfair
21 genetic testing and immediately paid to the unemployment reserve fund or, in the
22 case of a welfare payment, to the welfare agency making the payment.

23 SECTION 3. 111.39 (4) (c) 2. of the statutes is created to read:

24 111.39 (4) (c) 2. If the examiner finds that a respondent has engaged in
25 discrimination against a person, the examiner, in addition to any action ordered

1 under subd. 1., shall order the respondent to pay to the person compensatory and
2 punitive damages in an amount that the examiner finds appropriate and to pay to
3 the department an assessment equal to 10% of the amount of compensatory and
4 punitive damages ordered. All assessments collected under this subdivision shall be
5 deposited in the general fund and credited to the appropriation account under s.
6 20.445 (1) (gr).

7 **SECTION 4.** 111.39 (4) (c) 3. of the statutes is created to read:

8 111.39 (4) (c) 3. If the examiner orders any payment under subd. 1. or 2. because
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10 of that individual is liable for the payment.

11 **SECTION 5.** 111.39 (4) (c) 4. of the statutes is created to read:

12 111.39 (4) (c) 4. If the examiner finds a respondent violated s. 111.322 (2m), the
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15 party. Compensation in lieu of reinstatement for a violation of s. 111.322 (2m) may
16 not be less than 500 times nor more than 1,000 times the hourly wage of the person
17 discriminated against when the violation occurred.

18 **SECTION 6. Nonstatutory provisions.**

19 (1) WAGE DISPARITY STUDY.

20 (a) *Definition.* In this subsection, "minority group member" has the meaning
21 given in section 560.036 (1) (f) of the statutes.

22 (b) *Committee.* By the first day of the 3rd month beginning after the effective
23 date of this paragraph, the secretary of workforce development shall create and
24 appoint a committee consisting of the members specified in paragraph (c) to study

Insert
3-17

1 the issues specified in paragraph (d)^{✓ a.f.} and report its findings, conclusions, and
2 recommendations as provided in paragraph (e)^{✓ a.f.}.

3 (c) *Membership*. The committee shall consist of the following members:

4 1. Two members who are representatives of business and industry, who shall
5 be appointed from a list of candidates submitted by an association that represents
6 the interests of businesses and industries in this state.

7 2. Two members who are representatives of organized labor, who shall be
8 appointed from a list of candidates submitted by a labor organization that is
9 chartered by a federation of national or international labor organizations, admits to
10 membership local labor organizations, and exists primarily to carry on educational,
11 legislative, and coordinating activities.

12 3. Two members who are representatives of organizations whose objectives
13 include the elimination of wage disparities between men and women and between
14 minority group members and nonminority group members and who have
15 undertaken advocacy, educational, or legislative initiatives in pursuit of that
16 objective.

17 4. Three members who are employees of an institution of higher education or
18 a research institution and who have experience and expertise in the collection and
19 analysis of data concerning wage disparities between men and women and between
20 minority group members and nonminority group members and whose research has
21 been used in efforts to eliminate those disparities.

22 (d) *Study*. The committee shall study all of the following:

23 1. The extent to which wage disparities exist, in both the public and private
24 sectors, between men and women and between minority group members and
25 nonminority group members.

2. The factors that cause, or that tend to cause, those wage disparities, including segregation between men and women and between minority group members and nonminority group members, both within and across occupations; the payment of lower wages in occupations dominated by women or by minority group members; disparities between men and women in child-rearing responsibilities; and disparities in education and training between men and women and between minority group members and nonminority group members.

3. The consequences of those wage disparities on the economy and on individual families.

(e) *Recommendations.* The committee shall recommend solutions and policy alternatives, including proposed legislation, to eliminate and prevent wage disparities between men and women and between minority group members and nonminority group members. By the first day of the 15th month beginning after the effective date of this paragraph, the committee shall report its findings, conclusions, and recommendations to the secretary of workforce development who shall submit that report to the appropriate standing committees of the legislature in the manner provided under section 13.72¹ (3) of the statutes and to the governor by the first day of the 16th month beginning after publication.

SECTION 7. Initial applicability.

(1) *Employment discrimination damages.* The ~~renumbering and amendment of section 111.39 (4) (c) of the statutes and the creation of section 111.30 (4) (e) 2, 3, and 4. of the statutes~~ first apply to acts of employment discrimination committed on the effective date of this subsection.

(END)

treatment of sections 59.25 (3)(f)2,
59.40 (2)(m), 111.397, and 893.999
of the statutes
first apply

D-Note

2003-2004 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0978/lins
GMM.....

(INSERT 3-17)

SECTION ~~11~~ 59.25 (3) (f) 2. of the statutes is amended to read:

59.25 (3) (f) 2. For all court imposed fines and forfeitures required by law to be deposited in the state treasury, the amounts required by s. 757.05 for the penalty assessment surcharge, the amounts required by s. 165.755 for the crime laboratories and drug law enforcement assessment, the amounts required by s. 167.31 (5) for the weapons assessment, the amounts required by s. 973.045 for the crime victim and witness assistance surcharge, the amounts required by s. 938.34 (8d) for the delinquency victim and witness assistance surcharge, the amounts required by s. 973.046 for the deoxyribonucleic acid analysis surcharge, the amounts required by s. 961.41 (5) for the drug abuse program improvement surcharge, the amounts required by s. 100.261 for the consumer protection assessment, the amounts authorized by s. 971.37 (1m) (c) 1. or required by s. 973.055 (1) for the domestic abuse assessment, the amounts required by s. 253.06 (4) (c) for the enforcement assessment under the supplemental food program for women, infants, and children, the amounts required by s. 349.04 for the truck driver education assessment, the amounts required by ss. 346.177, 346.495, and 346.65 (4r) for the railroad crossing improvement assessment, the amounts required by s. 346.655 (2) (a) and (b) for the driver improvement surcharge, the amounts required by s. 102.85 (4) for the uninsured employer assessment, the amounts required by s. 299.93 for the environmental assessment, the amounts required by s. 29.983 for the wild animal protection assessment, the amounts required by ss. 29.987 and 169.46 (1) for the natural resources assessment surcharge, the amounts required by s. 29.985 for the fishing shelter removal assessment, the amounts required by s. 350.115 for the

snowmobile registration restitution payment, and the amounts required by ss. 29.989 and 169.46 (2) for natural resources restitution payments, and the amounts required under s. 111.397 (1) for the employment discrimination assessment, transmit to the state treasurer a statement of all moneys required by law to be paid on the actions entered during the preceding month on or before the first day of the next succeeding month, certified by the county treasurer's personal signature affixed or attached thereto, and at the same time pay to the state treasurer the amount thereof.

History: 1995 a. 201 ss. 266, 267, 269, 270, 284; 1995 a. 225 ss. 151 to 153; 1995 a. 227 s. 202; 1995 a. 269 s. 2; 1995 a. 408 s. 1; 1995 a. 448 s. 60; 1997 a. 27, 35, 135, 211, 237, 248; 1999 a. 9, 32, 74; 1999 a. 150 s. 672; 2001 a. 10, 2001 a. 30 s. 108; 2001 a. 56, 105.

SECTION 4. 59.40 (2) (m) of the statutes is amended to read:

59.40 (2) (m) Pay monthly to the treasurer for the use of the state the state's percentage of the fees required to be paid on each civil action, criminal action and special proceeding filed during the preceding month and pay monthly to the treasurer for the use of the state the percentage of court imposed fines and forfeitures required by law to be deposited in the state treasury, the amounts required by s. 757.05 for the penalty assessment surcharge, the amounts required by s. 165.755 for the crime laboratories and drug law enforcement assessment, the amounts required by s. 167.31 (5) for the weapons assessment, the amounts required by s. 973.045 for the crime victim and witness assistance surcharge, the amounts required by s. 938.34 (8d) for the delinquency victim and witness assistance surcharge, the amounts required by s. 973.046 for the deoxyribonucleic acid analysis surcharge, the amounts required by s. 961.41 (5) for the drug abuse program improvement surcharge, the amounts required by s. 100.261 for the consumer protection assessment, the amounts authorized by s. 971.37 (1m) (c) 1. or required by s. 973.055 for the domestic abuse assessment surcharge, the amounts required by s. 253.06 (4)

(c) for the enforcement assessment under the supplemental food program for women, infants, and children, the amounts required by s. 349.04 for the truck driver education assessment, the amounts required by ss. 346.177, 346.495, and 346.65 (4r) for the railroad crossing improvement assessment, the amounts required by s. 346.655 for the driver improvement surcharge, the amounts required by s. 102.85 (4) for the uninsured employer assessment, the amounts required by s. 299.93 for the environmental assessment, the amounts required under s. 29.983 for the wild animal protection assessment, the amounts required under ss. 29.987 (1) (d) and 169.46 (1) (d) for the natural resources assessment surcharge, the amounts required by s. 29.985 for the fishing shelter removal assessment, the amounts required by s. 350.115 for the snowmobile registration restitution payment, and the amounts required under ss. 29.989 (1) (d) and 169.46 (2) (d) for the natural resources restitution payments, and the amounts required under s. 111.397 (1) for the employment discrimination assessment. The payments shall be made by the 15th day of the month following receipt thereof.

History: 1995 a. 27 ss. 3290, 3291; 1995 a. 201 ss. 311 to 318, 320 to 322, 325; 1995 a. 224 ss. 11 to 13; 1995 a. 227 s. 203; 1995 a. 279 a. 8; 1995 a. 404 s. 185; 1995 a. 438; 1995 a. 448 s. 61; Sup. Ct. Order No. 96-08, 207 Wis. 2d xv (1997); 1997 a. 3, 27; 1997 a. 35 ss. 185, 186; 1997 a. 39, 135, 148, 191, 237, 248, 252; 1999 a. 9, 32; 1999 a. 150 s. 672; 2001 a. 16, 56, 61, 105.

SECTION 3 111.397 of the statutes is created to read:

111.397 Civil action. (1) A person discriminated against or the department may bring an action in circuit court against an employer, labor organization, employment agency, or licensing agency to recover damages caused by a violation of s. 111.321 after the completion of an administrative proceeding, including judicial review, concerning that violation. If the circuit court finds that a defendant has committed a violation of s. 111.321, the circuit court shall order the defendant to pay to the person discriminated against compensatory and punitive damages in an amount that the circuit court finds appropriate and to pay to the court an assessment

equal to 10% of the amount of compensatory and punitive damages ordered, except that if the circuit court orders any payment under this subsection because of a violation of s. 111.321 by an individual employed by an employer, the employer of that individual is liable for the payment. The clerk of circuit court shall collect and transmit the amount of any assessment ordered under this subsection to the county treasurer under s. 59.40 (2) (m). The county treasurer shall then make payment to the state treasurer under s. 59.25 (3) (f) 2. All assessments collected under this subsection shall be deposited in the general fund and credited to the appropriation account under s. 20.445 (1) (gr).

(2) An action under sub. (1) shall be commenced within the later of the following periods, or be barred:

(a) Within 60 days after the completion of an administrative proceeding, including judicial review, concerning the violation.

(b) Within 2 years after the violation occurred, or the department or person discriminated against should have reasonably known that the violation occurred.

~~SECTION 4~~ 893.99 of the statutes is created to read:

893.99 Employment discrimination; civil remedies. Any civil action arising under s. 111.397 is subject to the limitations of s. 111.397 (2).

(END OF INSERT)

(INSERT A TO INSERT A)

This bill permits a person who has been discriminated against or DWD to bring an action in circuit court to recover damages caused by the act of discrimination. Under the bill, if the circuit court finds that a defendant has committed an act of discrimination, the circuit court must order the defendant to pay to the person discriminated against compensatory and punitive damages in an amount that the circuit court finds appropriate and to pay to the circuit court an assessment equal to 10% of the amount of compensatory and punitive damages ordered. Assessments collected under the bill must be transmitted to the state treasurer, deposited in the

general fund, and credited to an appropriation account of DWD[✓], which must use those assessments for the administration of the fair employment law.

(END OF INSERT)

(END)

Insert A

2001 ASSEMBLY BILL 294

April 6, 2001 - Introduced by Representatives SINICKI, BALOW, BERGEAU, BLACK, BOCK, BOYLE, CARPENTER, COGGS, COLON, HEBL, KREUSER, LA FAVE, J. LEHMAN, MEYERHOFER, MILLER, PLOUFF, POCAN, RICHARDS, RILEY, RYBA, SHILLING, GRONEMUS and TURNER, cosponsored by Senators ERPENBACH, BURKE, CHVALA, DECKER, MOORE, RISSER, ROBSON and BAUMGART. Referred to Committee on Labor and Workforce Development.

1 AN ACT *to renumber and amend* 111.39 (4) (c); and *to create* 20.445 (1) (gr).
 2 111.39 (4) (c) 2., 111.39 (4) (c) 3. and 111.39 (4) (c) 4. of the statutes; **relating**
 3 **to:** authorizing the department of workforce development to order a person who
 4 discriminates in promotion, compensation, or in terms, conditions, or privileges
 5 of employment on the basis of sex, race, color, national origin, or ancestry to pay
 6 compensatory and punitive damages and an assessment, directing the
 7 secretary of workforce development to appoint a committee to study wage
 8 disparities between men and women and between minority group members and
 9 ~~nonminority group members. and making an appropriation.~~

Analysis by the Legislative Reference Bureau

Under the current fair employment law, if the department of workforce development (DWD) finds that a person has refused to hire an individual, terminated an individual's employment, or discriminated against an individual in promotion, compensation, or in terms, conditions, or privileges of employment on the basis of the individual's age, race, creed, color, disability, marital status, sex, national origin, ancestry, arrest or conviction record, membership in the national guard or military reserves, or use or nonuse of a lawful product during nonwork hours, DWD

ASSEMBLY BILL 294

may order the person to take such action as will effectuate the purpose of the fair employment law. That action may include reinstating the employee and providing back pay for not more than two years before the filing of the complaint, costs, and attorney fees. Current law, however, does not authorize DWD to order the payment of compensatory or punitive damages or any other assessments or penalties in a case of employment discrimination.

Insert A to Insert A
~~This bill authorizes DWD to order a person who has discriminated against an individual in promotion, compensation, or in terms, conditions, or privileges of employment on the basis of the individual's sex, race, color, national origin, or ancestry to pay to the individual compensatory and punitive damages in an amount that DWD finds appropriate and to pay to DWD an assessment equal to 10% of the amount of compensatory and punitive damages ordered. DWD must use those assessments collected for the administration of the fair employment law.~~

The bill also directs the secretary of workforce development (secretary) to appoint a committee to study the issue of wage disparities between men and women and between minority group members and nonminority group members and to recommend solutions and policy alternatives, including proposed legislation, to eliminate and prevent those wage disparities. The committee must consist of representatives of business and industry, organized labor, organizations whose objectives include the elimination of wage disparities, and employees of institutions of higher education or research institutions who have experience and expertise in the collection and analysis of data concerning wage disparities. The committee must report its findings, conclusions, and recommendations to the secretary by the first day of the 15th month beginning after publication of the bill, and the secretary must submit that report to the appropriate standing committees of the legislature and to the governor by the first day of the 16th month beginning after publication of the bill.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 20.445 (1) (gr) of the statutes is created to read:

20.445 (1) (gr) *Employment discrimination assessments*. All moneys received from assessments collected under s. 111.39 (4) (c) 2., for the administration of subch. II of ch. 111.

SECTION 2. 111.39 (4) (c) of the statutes is renumbered 111.39 (4) (c) 1. and amended to read:

(end of insert)

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-097801dn
GMM. *kyf*

Date

Representative Sinicki: *(S)*

a concern raised

As I discussed with your aide, Jan Koloen, under this draft the circuit court, rather than DWD, will order the compensatory and punitive damages and assessments. This change was made to address ~~the argument made last session by the opponents of the bill~~ that it constituted a conflict of interest to permit DWD both to order the assessments and to keep the moneys assessed. Under this draft, a neutral forum, the circuit court, will order the assessments and transmit the assessments collected to the state treasurer for deposit in the general fund and crediting to the DWD appropriation.

If you have any questions about the draft, please do not hesitate to contact me directly at the phone number or e-mail address listed below.

Gordon M. Malaise
Senior Legislative Attorney
Phone: (608) 266-9738
E-mail: gordon.malaise@legis.state.wi.us

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0978/1dn
GMM:kjf:pg

February 11, 2003

Representative Sinicki:

As I discussed with your aide, Jan Koloen, under this draft the circuit court, rather than DWD, will order the compensatory and punitive damages and assessments. This change was made to address a concern raised last session that it constitutes a conflict of interest to permit DWD both to order the assessments and to keep the moneys assessed. Under this draft, a neutral forum, the circuit court, will order the assessments and transmit the assessments collected to the state treasurer for deposit in the general fund and crediting to the DWD appropriation.

If you have any questions about the draft, please do not hesitate to contact me directly at the phone number or e-mail address listed below.

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